GOVERNMENT OF MYSORE

LABOUR AND MUNICIPAL ADMINISTRATION DEPARTMENT, (LABOUR).

Labour Dispute.—Industrial Dispute between the workmen and the Management of M/s. Jeppu Coffee Curing Works of M/s. Pierce Leslie & Co., Ltd., Jeppu, Mangalore.

Award of the Labour Court, Bangalore—published.

Read the following papers :

(i) Letter No. 1/66-67, dated 21st November 1966, from Shri P. T. Kadkol, Presiding Officer, Labour Court, Bangalore.

BEFORE THE PRESIDING OFFICER, LABOUR COURT, BANGALORE

Dated this 21st day of November 1966.

Present :

Sri P. T. Kadkol, B.SC., LL.B., *Persiding Officer.*

Reference No. 26 of 1966.

Between

Workmen represented by the Secretary, South Kanara Cashew and Coffee Workers' Union, Maidan Cross Road, Mangalore-1.

I Party.

and

The Management of M/s. Jeppu Coffee Curing Works of M/s. Pierce Leslie & Co., Ltd., Jeppur, Mangalore.

II Party.

Reference : Government Order No. LMA 561 LLD 65, dated 28th February 1966.

AWARD

The Government of Mysore being of opinion that an industrial dispute exists between the workmen and the management of M/s. Jeppu Coffee Curing Works of M/s. Pierce Leslie & Co., Ltd., Jeppur, Mangalore, have referred it for adjudication to this court under Section 10 (1) (*c*) of the Industrial Disputes Act, 1947, by their Order No. LMA 561 LLD 65, dated 28th February 1966, setting out the following points of dispute for adjudication :—

"1. Are the Management of M/s. Pierce Leslie & Co., Jeppu Coffee Curing Works, Mangalore, justified in refusing to pay the wages to the workers mentioned in the annexure on 27th and 28th November 1964 when they offered to work when the other Sections of the workers launched a strike ?

If not, to what other relief they are entitled to ?"

ANNEXURE

List of workers those who were willing to work, without participating in the stay-in-strike launched by the members of ITUC (Left) controlled Union, at Pierce Leslies & Co., Jeppu Coffee Curing Works.

S. No.	*Name and Section*	*Token No.*
	Srimathis—	
1	Yelloo D'Souza—Shelling	.. 125
2	Alice Fernandez—Peeling	.. 1377
3	Tereza D'Souza—Peeling	.. 901
4	Leena D'Souza—Shelling	.. 126
5	Evline Monterio—Shelling	.. Temp. 5
6	Martin Monterio—Shelling	.. Temp. 131
7	Jessi Veigus—Shelling	.. Temp. 17
8	Cecil Perrao—Shelling	.. Temp. 87
9	Mary Menezes—Shelling	.. Temp. 122
10	Anjeline D'Mello—Shelling	.. Temp. 123
11	Kalyani—Shelling	.. Temp. 143
12	Lakshmi—Shelling	.. Temp. 146
13	Mary Alphonso—Shelling	.. Temp. 539
14	Vosin Veigus—Shelling	.. 829
15	Bar Ina Veigus—Shelling	.. 410
16	Chandravati—Shelling	.. Temp. 7
17	Somakke—Peeling	.. Temp. 803
18	Lilli D'Souza—Peeling	.. Temp. 1112
19	Lilli D'Souza—Peeling	.. 1049
20	Radha—Peeling	.. 1050
21	Sesamma—Peeling	.. 875
22	Nagamma—Peeling	.. 872
23	Agnes Hotman—Peeling	.. 90
24	Kamala—Peeling	.. 906
25	Machu D'Souza—Peeling	.. 1068
26	Lilli D'Souza—Peeling	.. 1025
27	Rita D'Souza—Peeling	.. 1036
28	Shanti—Peeling	.. 874
29	Radha—Peeling	.. 876
30	Nathal D'Souza—Peeling	.. 1358
31	Alice D'Souza—Peeling	.. 1036
32	Maria Palanna—Shelling	.. Temp. 63
33	Rita D'Souza—Shelling	.. Temp. 13
34	Maggi D'Souza—Shelling	.. 310
35	Benni D'Souza—Shelling	.. 461
36	Agnes Leem—Shelling	.. Temp. 104
37	Nathal D'Souza—Peeling	.. 1096

S. No.	*Name and Section*	*Token No.*
Srimathis—		
38	Lucy Veigus—Shelling ..	582
39	Esthel D'Souza—Shelling ..	581
40	Flourine D'Souza—Shelling ..	Temp. 24
41	Peiade D'Souza,—Peeling ..	1269
42	Yelloo—Pelling ..	1318
43	Cecil Pereira—Shelling ..	Temp. 33
44	Alice D'Souza—Shelling ..	Temp. 32
45	Rita D'Souza—Shelling ..	Temp. 4
46	Benny D'Souza—Shelling ..	Temp. 307
47	Pula D'Souza—Shelling ..	Temp. 388
48	Anjeline D'Souza—Shelling ..	Temp. 343
49	Alice—Shelling ..	391
50	Rosy D'Souza—Peeling ..	1336
51	Devaki—Shelling ..	445
52	Appi—Shelling ..	605
53	Eliza D'Souza—Shelling ..	Temp. 105
54	Devamma—Shelling ..	93
55	Pula Cutinha—Peeling ..	969
56	Kalyani—Peeling ..	1237
57	Mary Veigus—Peeling ..	940
58	Dorothine D'Souza—Shelling ..	219
59	Sobina Veigus—Shelling ..	239
60	Maggi Monoheirt—Peeling ..	641
61	Maggi Monheire—Peeling ..	941
62	Veronica D'Souza—Shelling ..	67
63	Irine Lobo—Peeling ..	1337
64	Benny D'Souza—Peeling ..	1368
65	Marceline D'Souza—Peeling ..	1366
66	Yommi Lobo—Peeling ..	936
67	Pereza—Shelling ..	Temp. 64
68	Lilli—Shelling ..	861
69	Lilli—Shelling ..	363
70	Birjith—Shelling ..	301
71	Hilda—Shelling ..	Temp. 124
72	Cecil D'Souza—Shelling	58
73	Dulcine Veigus—Peeling	892
74	Christine—Peeling	1006
75	Kalyani—Peeling	862
76	Sevrine D'Souza—Peeling	1012
77	Venkamma—Peeling	864
78	Marceline—Peeling	1250

S. No.	*Name and Section*	*Token No.*
Srimathis—		
79	Eliza D'sa—Peeling	1236
80	Singine Cutinha—Peeling	1106
81	Veronica D'Souza—Peeling	1144
82	Lilli Perrao—Peeling	1146
83	Puttu Gatti—Shelling	299
84	Juvan D'Souza—Peeling	905
85	Girija—Peeling	988
86	Mary Pereira—Peeling	831
87	Maggi D'Souza—Peeling	983
88	Pauline D'Souza—Peeling	989
89	Mary —Peeling	835
90	Lalitha—Peeling	925
91	Devi—Peeling	924
92	Tereza D'Souza—Peeling	1353
93	Seemanthi—Peeling	1350
94	Alice D'Souza—Peeling	1352

2. The cause of the aggrieved workmen has been sponsored by the South Kanara Cashew and Coffee Workers' Union, Mangalore, which is a registered Trade Union. This Union, as representing the workmen, is the first party and the Management of M/s. Pierce Lesli & Co., Mangalore, is the second party in this proceeding. Mr. T P. Rao and Mr. Talacherikar have appeared for the Union and Mr. Venkappa Rai has appeared for the Management.

3. The Second Party runs a Cashew Factory at Mangalore and has employed a large number of Workmen, both male and female. Some of the Workers are the members of the First Party Union (hereinafter referred to as the First Union) and some are the members of another Trade Union by name "South Kanara Cashew, Coffee and Allied Workers' Union, Mangalore" (hereinafter referred to as the Second Union).

4. The Workmen who are the members of the Second Union staged a srike in the Factory on the 27th and 28th of November 1964. It was a stay-in-strike. It appears that the Management as well as the First Union were aware of the intended strike. So, on 25th November 1964, Mr. Talcherikar, the Secretary of the First Union wrote a letter to the Management to the effect that, the members of his union were not participating in that strike and requesting the Management to allow them to work and afford them protection from the threats and harassment of the rival Union.

5. The strike was actually launched on the 27th and 28th November 1964. Many workmen wentt on strike. But the ninety-four lady workers involved in this Reference did not participate in it. After the strike was withdrawn, these 94 lady workers demanded their wages for the two days of the strike. The Management refused to pay them. After conciliation failed, Government have referred the dispute to this Court for adjudication.

6. It has been alleged by the Union in the Statement of Claims that the action of the Management in with-holding the wages of the 94 workers is unjust and illegal; they actually attended to their duties on the two days of the strike and hence are entitled to their wages for those days. It has prayed that the Management be directed to pay them their due wages for those two days.

7. The contentions raised by the Management in their statement of objections are these:—

> The labour force of the Factory went on illegal stay-in-strike on the 27th and 28th November 1964, without notice and without reasonable cause; the Management took down the names of the workers who may have been willing to work; the Management never promised such workers that their wages would be paid: the Management wanted to find out whether a large section of the workers would be willing to come forward for work; it found that only a small section of the workers, was willing to work on those days; so the Management decided that it was not possible to provide work to the small section of the workers in view of the general strike; if the Management had allowed this small section of workers to work, there would have been confusion in the Factory, as the striking workers would have prevented them from working; it is true that the First Party Union had written the letter dated 25th November 1964 to the Management; but the Management was unable to provide this small section of workers, with work; in these circumstances the 94 workers mentioned in the order of reference are not entitled to the wages demanded by them etc.

8. The point arising for decision is whether the 94 workers under Reference are entitled to their wages for the two days of the strike. The Union contends that since these workers were willing to work and did attend to their work they are entitled to their wages. It is urged for the Management that in the given circumstances, they were fully justified in refusing to provide them with work and are not liable to pay their wages in view of the provisions of Section 25 E (iii) of the Industrial Disputes Act, 1947.

9. Evidence had been led by both the parties with respect to the point of dispute. The Union has examined a worker by name Smt. Veronica (W.W. 1) and the Management has examined the Manager of the factory, Sri George Rent (M. W. 1). This is all the evidence in the case.

10. Sri George Rent has been the Manager of the factory since January 1960 and was also the manager on the two days of strike, namely, the 27th and 28th of November. He has sworn that the factory has seven main departments, employing 1,400 workers. The departments are, Roasting, Shelling, drying, peeling, grading, yard work and packing and the work goes on at a continuous process, starting with roasting, in the order given above. The roasting section starts roasting at 6 A.M. and works till 2 P.M. with a break of half an hour. About 20 to 23 tons of raw nuts are roasted each day, which works at $2\frac{1}{2}$ to 3 tons per hour. The roasted nuts are carried to the shelling Department by conveyor belts. In that department, the distributor boys distribute them to the shellers for shelling. Then the shelled nuts are dried. The dried nuts then go to the peeling section where the peeling is done. After peeling they are graded. Thereafter, they are packed. The work goes on continuously like this. If the roasting Department does not work, then there will be no work for the shelling department and so on. This is what the Manager has stated and what Smt. Veronica has admitted.

11. The main and material facts are not in dispute. The working hours of the factory for all the workers (Except the workers in the roasting department) are from 8 A.M. to 5 P.M. with a break of one hour from 12 noon to 1 P.M. Late attendance in the morning is overlooked by the Management for half an hour or so, as the workers live in far off places.

12. The roasting department commenced work on the 27th November at the usual hour and worked till 8.30 A.M. The Strike commenced at about 10 A.M., when the workers of all departments had some inside the factory. It was a stay-in-strike. The Manager has sworn that he found that the roasters had stopped roasting, and the workers in other departments were sitting idle at their work spots or at places nearby. They neither commenced work nor were they prepared to go out.

13 The Manager has then stated that he asked the yard supervisor to note down the names of the workers, who were willing to work. He did so. It was found that only 95 workers were willing to work. None from the roasting department, however, was willing to work. The Manager has then sworn that with this small batch of 95 workers, the factory work for the day could not be carried on and if he gave them work, it would have added to the

confusion prevailing in the factory then. The Manager has also sworn that he never represented or promised the workers willing to work; that heir wages for the day would be paid.

14. From this testimony of the Manager, it would be clear that out of a total labour force of 1,400 workers, only about 95 workers were willing to work and all the rest were on strike. The roasting department had come to a stand still. Out of the 95 workers who were willing to work, 94 are workers now under reference. Of them 52 workers are from the Peeling Department and the remaining 42 workers are from the shelling department.

15. Smt. Veronica has admitted that the strike started at 10 A.M. She has stated that when she was doing her work in the shelling department on 27th November 1964, the section-supervisor came to her and asked her and other shellers to stop work. Then she has stated :—

> " I and other workers went to the Manager's Office and asked him to give us work. He asked us to give him our names and numbers and sit down at our respective places and told us that wages would be paid to us. We gave our names to the Labour Officer. We sat at our places till 5 P.M. and thereafter went to the Labour Officer and asked him what we should do. He asked us to go home as the time was over and come to the factory the next morning and give our names. The next morning, *i.e.*, 28th we went to the factory and gave our names."

These facts stated by Smt. Veronica are not disputed by the Management except on the point that there was a promise on its part to pay wages to the workers who were willing to work and the further fact that these workers were asked by it to sit at their work-posts.

16. The situation in the factory with about 1,300 workers on stay-in-strike, all sitting idle, must have been very tense. Smt. Veronica has stated in her cross-examination (para 7) :—

> " We sat without work because of the strike. We did so because of what the Manager told us ".

This admission makes it clear that no work was done in the factory on the two days of the strike. The Management was also faced with a delicate situation. Starting of any work in any of the departments which could be worked with a handful of willing workers, would have created a bitter resentment in the minds of the striking workers. If, in these circumstances, the Management, in its judgment and discretion, did not put the workers under Reference, on work, it can not be accused of doing something uniust or illegal or wrongful. There was always the apprehension in the mind of the Management (which, in my opinion is quite reasonable) that the strike, which commenced

peacefully, might turn hostile at any moment. The Management did not want, perhaps, to take the risk of putting the willing workers, on duty to avoid the precipitation of the situation. Its action, therefore, was fully justifiable.

17. In these circumstances, all that can be said against the Management is that there was a lay off of some willing workers. Normally, the Management is liable to pay compensation in cases of a lay off. It is here that the provisions of Section 25E (iii) come into play. The Section provides :—

> "No compensation shall be paid to a workman who has been laid off :—
>
> —if such laying-off is due to a strike or slowing down of production on the part of workmen in another part of the Establishment"

18. The Management seeks protection under this provision of law. In my opinion, it is entitled to this protection. There are two decisions in point. The first is the decision of the Kerala High Court, reported in 1962 (2) LLJ 319 (Lonetree Estate *Vs.* Industrial Tribunal) and the other is the decision of the Bombay High Court reported in 1966 (I) LLJ 560 (Zandu Pharmaceutical Works *Vs.* R. N. Kulkarni & Co.,). The Kerala High Court has held :—

> "When on account of strike by some workmen in one part of the establishment, the Management did not give work to the other workmen, the award made by the Industrial Tribunal directing the Management to pay unemployment compensation to such workmen on the ground that inability to give work amounted to lock out, must be quashed".

The Bombay High Court has held :—

> "The workmen laid off as a consequence of strike by some other workmen in the same establishment must be held not entitled to any lay-off compensation in view of the provisions of Section 25E (iii) of the Industrial Disputes Act."

19. These two decisions, fully cover the facts in this case. Relying on these decisions and the provisions of Section 25E (iii) of the Industrial Disputes Act, I hold that the workers under Reference are not entitled to any wages or any compensation for lay off and record my finding on the point of dispute referred for adjudication in favour of the Second Party and proceed to make an Award as under :—

AWARD

The Reference is rejected. The demands made by the 94 aggrieved workers and the First Party Union on their behalf are also rejected. Parties do bear their own costs.

P.T. KADKOL,
Presiding Officer,
Labour Court, Bangalore.

APPENDIX

List of witnesses examined in this case on behalf of—

1st Party :

W.W. 1. Smt. Veronica.

2nd Party :

M.W. 1. Mr. George Rent.

List of documents admitted in this case on behalf of—

1st Party :

Nil.

2nd Party :

Nil.

P. T. KADKOL,
Presiding Officer,
Labour Court Bangalore.